

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

In re	Chapter 11
TPC GROUP INC, <i>et al.</i> ,	Bankr. Case No. 22-10493 (CTG)
<i>Debtors.</i> ¹	Jointly Administered
BAYSIDE CAPITAL, INC. and CERBERUS CAPITAL MANAGEMENT, L.P.,	Bankr. Adv. Proc. No. 22-50372 (CTG)
<i>Plaintiffs-Appellants,</i>	Civ. Action No. 22-cv-927 (RGA)
v.	
TPC GROUP INC.,	
<i>Defendant-Appellee,</i>	
-and-	
THE AD HOC NOTEHOLDER GROUP,	
<i>Intervenor-Defendant- Appellee.</i>	

**APPELLANTS' DESIGNATION OF THE RECORD ON APPEAL AND
STATEMENT OF THE ISSUES TO BE PRESENTED ON APPEAL**

Appellants Bayside Capital, Inc. and Cerberus Capital Management, L.P. (the “Appellants”), pursuant to Federal Rule of Bankruptcy Procedure 8009(a)(1)(A), hereby designate

¹ The Debtors in these Chapter 11 cases, and the last four digits of their federal tax identification numbers, are: TPC Group Inc. (3618); TPC Holdings, Inc. (7380); TPC Group LLC (8313); Texas Butylene Chemical Corporation (7440); Texas Olefins Domestic International Sales Corporation (4241); TPC Phoenix Fuels LLC (9133); Port Neches Fuels, LLC (1641); and TP Capital Corp. (6248). Each Debtor’s corporate headquarters and mailing address is 500 Dallas St., Suite 2000, Houston, Texas 77042.

the following items² to be included in the record on appeal and state the issues to be presented on appeal:

I. Designation of Items to Be Included in the Record on Appeal

Docket No. and Case or Adversary No.	Date Filed	Description
[D.I. 1, Case No. 22-10493]	6/1/2022	Chapter 11 Voluntary Petition
[D.I. 27, Case No. 22-10493]	6/1/2022	Declaration of Robert A. Del Genio in Support of Debtors' Chapter 11 Petitions and First Day Motions
[D.I. 36, Case No. 22-10493]	6/1/2022	Motion to Allow Debtors Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Senior Secured Priming Superpriority Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Claims with Superpriority Administrative Expense Status, (III) Granting Adequate Protection to the Prepetition Secured Parties, (IV) Modifying the Automatic Stay, and (V) Granting Related Relief Filed by TPC Group Inc.
[D.I. 68, Case No. 22-10493]	6/1/2022	Declaration of Zul Jamal in Support of Debtors' Motion for Entry of Interim and Final Orders
[D.I. 76, Case No. 22-10493]	6/2/2022	Objection of the Ad Hoc Group of Non-Consenting Noteholders to Debtors' Motion for Entry of Interim and Final Orders Approving DIP Financing
[A.D.I. 3, Adv. No. 22-50372]	6/2/2022	[SEALED] Complaint for Declaratory Judgment
[A.D.I. 4, Adv. No. 22-50372]	6/2/2022	[SEALED] Ad Hoc Group of Non-Consenting Noteholders' Motion for Summary Judgment
[A.D.I. 5, Adv. No. 22-50372]	6/2/2022	[SEALED] Declaration of Aaron L. Renenger in Support of the Ad Hoc Group of Non-Consenting Noteholders' Motion for Summary Judgment
[D.I. 148, Case No. 22-10493]	6/3/2022	Transcript of First Day Hearing Before the Honorable Craig T. Goldblatt
[A.D.I. 17-4, Adv. No. 22-50372]	6/9/2022	Letter to U.S. National Bank dated April 26, 2022, as Exhibit D to Plaintiffs' Opening Brief in Support of Motion for Summary Judgment
[A.D.I. 40, Adv. No. 22-50372]	6/17/2022	TPC Group Inc's Brief in Opposition to Plaintiffs Motion for Summary Judgment
[A.D.I. 44, Adv. No. 22-50372]	6/17/2022	Ad Hoc Noteholder Group's Cross-Motion for Summary Judgment
[A.D.I. 51, Adv. No. 22-50372]	6/22/2022	[SEALED] Declaration of Oscar Shine

² Unless otherwise indicated, the designation of each item herein includes any exhibits and/or attachments filed together with that item under the same docket number. The designation also includes the sealed version of any document that was filed under seal.

Docket No. and Case or Adversary No.	Date Filed	Description
[A.D.I. 55, Adv. No. 22-50372]	6/24/2022	Declaration of Oscar Shine in Support of Plaintiffs-Counterclaim Defendants' Consolidated Memorandum of Law in Further Support of Their Motion for Summary Judgment
[A.D.I. 64, Adv. No. 22-50372]	6/28/2022	Plaintiffs-Counterclaim Defendants' Consolidated Memorandum of Law in Further Support of Their Motion for Summary Judgment and In Opposition to Intervenor-Defendant's Motion for Summary Judgment,
[A.D.I. 69, Adv. No. 22-50372]	7/1/2022	Transcript of Summary Judgment Hearing Before the Honorable Craig T. Goldblatt
[A.D.I. 72, Adv. No. 22-50372]	7/6/2022	Memorandum Opinion
[A.D.I. 74, Adv. No. 22-50372]	7/8/2022	Order Resolving Pending Motions
[A.D.I. 75, Adv. No. 22-50372]	7/8/2022	Judgment
[A.D.I. 76, Adv. No. 22-50372]	7/8/2022	Notice of Appeal
[A.D.I. 78, Adv. No. 22-50372]	7/8/2022	Motion of Plaintiffs for Stay of Effectiveness and Enforcement of Order and Judgment Pending Appeal and Suspension of Other Proceedings Pursuant to Bankruptcy Rule 8007
[A.D.I. 80, Adv. No. 22-50372]	7/8/2022	Emergency Motion to Shorten
[A.D.I. 84, Adv. No. 22-50372]	7/11/2022	Declaration of Zul Jamal in Support of Debtors and Intervenor Defendants' Consolidated Response to Plaintiffs' Motion for Stay
[A.D.I. 85, Adv. No. 22-50372]	7/11/2022	Declaration of Robert Del Genio in Support of Debtors and Intervenor Defendant's Consolidated Response to Plaintiffs' Emergency Motion for Stay of Effectiveness and Enforcement of Order and Judgment Pending Appeal and Suspension of Other Proceedings
[A.D.I. 86, Adv. No. 22-50372]	7/11/2022	Debtors' and Intervenor Defendant's Consolidated Response to Plaintiffs' Emergency Motion for Stay of Effectiveness and Enforcement of Order and Judgment Pending Appeal and Suspension of Other Proceedings
[A.D.I. 87, Adv. No. 22-50372]	7/11/2022	Opinion Denying Motion for Stay Pending Appeal
[A.D.I. 88, Adv. No. 22-50372]	7/11/2022	Order Denying Motion for Stay Pending Appeal
[D.I. 423, Case No. 22-10493]	7/12/2022	Omnibus Reply of the Ad Hoc Noteholder Group to Objections to Debtors' Motion for Entry of Interim and Final Orders

II. Statement of the Issues to be Presented on Appeal

1. On July 6, 2022, the Bankruptcy Court entered the *Memorandum Opinion*, A.D.I. 72 (the “Opinion”), addressing the parties’ various motions in the above-captioned adversary proceeding (Adv. Pro. No. 22-50372). On July 8, 2022, the Bankruptcy Court entered the *Order Resolving Pending Motions*, A.D.I. 74 (the “Order”), and *Judgment*, A.D.I. 75, in the above-captioned adversary proceeding, which, among other things, denied *Plaintiffs’ Motion for Summary Judgment*, A.D.I. 4., granted the *Ad Hoc Noteholder Group’s Cross-Motion for Summary Judgment*, A.D.I. 43, and entered judgment in favor of Defendants on Plaintiffs’ claims.

2. The Bankruptcy Court’s Order and Judgment should be reversed on appeal because, among other things, the Bankruptcy Court misinterpreted the unambiguous terms of the governing contracts, misapplied New York law, improperly invoked industry custom and usage and commercial reasonableness to create and incorrectly resolve an ambiguity, and prematurely granted summary judgment after identifying an ambiguity no party had raised.

3. There are four issues in this appeal:

a. First, whether the Bankruptcy Court erred in holding that the amendments and supplements that subordinated Appellants’ debt did not violate the governing indenture, when that indenture unambiguously prohibited nonconsensual changes to provisions of the indenture and the related intercreditor agreement dealing with the application of proceeds of Collateral.

b. Second, whether the Bankruptcy Court erred in failing to apply the only on-point New York precedent properly to a contract governed by New York law

c. Third, whether the Bankruptcy Court erred in relying on industry custom and usage, as well as the Court’s own assessment of commercial reasonableness, in interpreting an indenture the parties agreed was unambiguous, particularly when no discovery had been taken,

no pertinent evidence was in the record, and all parties agreed that industry custom and usage were irrelevant.

d. Fourth, whether the Bankruptcy Court erred in granting summary judgment prior to discovery after it incorrectly concluded that the governing indenture was ambiguous.

III. Certificate Regarding Transcripts

Pursuant to Rule 8009(b)(1)(B) of the Federal Rules of Bankruptcy Procedure, Appellants hereby file this certificate stating that Appellants are not ordering any transcripts. All transcripts have been prepared and are filed on the docket and are designated in the foregoing designation of the record.

* * *

Appellants reserve any and all rights to amend this Designation of Record on Appeal and Statement of the Issues to Be Presented on Appeal, each as set forth herein, including, without limitation, to identify and to include additional issues and items for inclusion in the record on appeal.

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Dated: July 22, 2022

Respectfully submitted,

PACHULSKI STANG ZIEHL & JONES LLP

By: /s/ Laura Davis Jones

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